THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19983 of 2005

12.9.2005

Between:

Syed Arif Pasha, S/o.S.M.D.Kiran Pasha,

Brahman Street, Kadapa, Kadapa District.

… Petitioner.

AND

1. The State Election Commissioner, Budha Bhavan,

Tank Bund, Secunderabad.

And others.

… Respondents.

ORDER:

The petitioner herein is resident of Kadapa. The election programme for quinquennial elections to municipal corporations was announced on 29.8.2005 by the first respondent. The petitioner and ten others including respondents 5 to 7 herein submitted nominations. On the date of scrutiny on 06.9.2005, the petitioner submitted an objection petition to the Election Officer, Kadapa Municipal Corporation. He alleged that respondents 5 to 7 failed to submit the affidavit in support of declaration in Annexure XXXII of the nomination and therefore, their nominations are liable to be rejected, in vain. Therefore, the petitioner seeks a writ of Mandamus declaring the action of the fourth respondent in not rejecting the nominations of the respondents 5 to 7 as illegal and arbitrary and for a consequential direction to take immediate action on the complaint of the petitioner dated 06.9.2005.

Learned Counsel for the petitioner, Sri V.Viswanatham, has made elaborate submissions against the acceptance of nominations of respondents 5 to 7 by the fourth respondent. He, however, does not dispute that improper acceptance or improper rejection of a nomination is a ground for Election Petition and also does not deny that as per Article 243-ZG of Constitution of India, an election can be challenged only by way of an Election Petition. **Per contra**, the learned Standing Counsel for Kadapa Municipal Corporation opposed the writ petition contending that the writ petition is not maintainable.

In **V.Narayana v. Election Officer, Alwal Municipality** (**Narayana**, for brevity), this Court has held that when a nomination is rejected, a writ petition would not lie. It was held therein that challenge to election means and includes a challenge to any

intermediary stage in the election and that when the nomination is rejected or accepted improperly, the same has to be agitated by way of Election Petition. The decision in **Narayana** was followed by Full Benches of this Court in **A.P.Sarpanchas Association v Govt. of A.P.** and **G.Kanaka Durga v State Election Commissioner**. Further in **C.Subrahmanyam v K.Ramanjaneyulu**, the Supreme Court held that even if the election is challenged on the ground of non-compliance of the provisions of the A.P. Panchayat Raj Act, 1994 or Conduct of Election Rules, 1961, the writ petition would not be maintainable and it is only by way of Election Petition that such thing can be challenged. In view of the settled position, this writ petition is not maintainable.

The writ petition is, accordingly, dismissed. No costs.

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(**V.V.S.RAO,J**)

September 12, 2005.

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